

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ROADGUARD INTERLOCK LLC,

11 Plaintiff,

12 v.

13 SOUND DISTRIBUTIONS INC.,

14 Defendant.

CASE NO. C24-0742JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is Plaintiff Roadguard Interlock LLC's ("Roadguard") motion for
17 entry of default judgment against Defendant Sound Distributions, Inc. ("Sound
18 Distributions") (Def. J. Mot. (Dkt. # 16)) and Sound Distributions's motion to set aside
19 default (Mot. (Dkt. # 22); Reply (Dkt. #27)). Roadguard opposes Sound Distributions's
20 motion (Resp. (Dkt. # 25)), and the court stayed briefing on Roadguard's motion for
21 default judgment pending the resolution of that motion (10/3/24 Order (Dkt. # 24)). The
22 court has considered the parties' submissions, the relevant portions of the record, and the

governing law. Being fully advised,¹ the court GRANTS Sound Distributions's motion to set aside default; VACATES the entry of default; GRANTS IN PART Roadguard's request for attorneys' fees and costs incurred as a result of Sound Distributions's default; and DENIES Roadguard's motion for default judgment as moot.

II. BACKGROUND

This matter arises from Sound Distributions's alleged breach of a contract by which Roadguard appointed Sound Distributions its service provider for the installation and maintenance of interlock ignition devices. (Compl. (Dkt. # 1) ¶¶ 6, 8.) These devices are installed in motor vehicles to prevent potentially intoxicated persons from starting the vehicles. (*Id.*) Roadguard alleges Sound Distributions breached the contract by failing to pay fees for monthly rentals of the devices and replacement costs for devices that it did not return after the contract was terminated. (*Id.* ¶¶ 13-15; *see also id.* ¶ 16 (alleging that Sound Distributions owed Roadguard \$477,324.51 as of July 21, 2023).)

Roadguard filed this action on May 29, 2024. (*See generally id.*) Sound Distributions accepted service on July 3, 2024. (Acc. of Service (Dkt. # 8).) It did not, however, answer or respond to the complaint before the deadline to do so expired. *See* Fed. R. Civ. P. 12(a)(1)(A)(i) (requiring defendant to answer or respond within 21 days of service). On August 5, 2024, counsel for Roadguard notified Justin I. Mishkin, counsel for Sound Distributions, that Roadguard intended to seek entry of default. (*See*

¹ Neither party requests oral argument and the court concludes that oral argument would not be helpful to its disposition of the motions. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 | Feinberg Decl. (Dkt. # 26) ¶ 10, Ex. B.) Sound Distributions filed an answer, affirmative
2 | defenses, and counterclaims on August 9, 2024. (Answer (Dkt. # 9).)

3 | On August 12, 2024, the Clerk issued a deficiency letter informing Sound
4 | Distributions that (1) Mr. Mishkin did not properly sign the answer in accordance with
5 | Federal Rule of Civil Procedure 11,² Local Civil Rule 83.2,³ and Section IV(L) of the
6 | court’s Electronic Filing Procedures,⁴ and (2) attorney Yaamini Sharma, who signed the
7 | answer, was not admitted to practice in this District and therefore must submit a petition
8 | for admission and notice of appearance to proceed as counsel. (Def. Letter (Dkt. # 10).)
9 | The Clerk instructed Mr. Mishkin to file a corrected signature page for the answer by
10 | August 26, 2024. (*See id.*) Neither Mr. Mishkin or Ms. Sharma corrected the
11 | deficiencies before that deadline. (*See generally* Dkt.)

12 | On August 27, 2024, the court ordered Sound Distributions to show cause by no
13 | later than September 4, 2024, why it should not strike Sound Distributions’s answer for
14 | failure to comply with Rule 11, Local Civil Rule 83.2, and the deficiency letter. (8/27/24
15 | Order (Dkt. # 11).) The court also allowed Sound Distributions to satisfy the order by
16 |

17 | _____
18 | ² “Every pleading . . . must be signed by at least one attorney of record . . . or by a party
19 | personally if the party is unrepresented.” Fed R. Civ. P. 11(a). “The court must strike an
unsigned paper unless the omission is promptly corrected after being called to the attorney’s or
party’s attention.” *Id.*

20 | ³ “An attorney eligible to appear may enter an appearance in a civil case by properly
21 | signing in accordance with the ECF Filing Procedures and filing a Notice of Appearance . . . [or]
answer . . . on behalf of the party the attorney represents.” Local Rules W.D. Wash. LCR
83.2(a).

22 | ⁴ The Electronic Filing Procedures set forth rules governing signatures on electronically
filed documents. *See* <https://www.wawd.uscourts.gov/sites/wawd/files/ECFFilingProcedures.pdf>

1 having Mr. Mishkin file a corrected signature page and/or by having Ms. Sharma obtain
2 admission to this District and file a notice of appearance. (*Id.*)

3 Sound Distributions did not file a response to the order to show cause, a corrected
4 signature page for Mr. Mishkin, or a notice of appearance for Ms. Sharma before the
5 September 4 deadline. (*See generally* Dkt.) Accordingly, the court struck Sound
6 Distributions's answer. (9/5/24 Order (Dkt. # 12).) Later that same day, Roadguard
7 moved for entry of default. (Def. Mot. (Dkt. # 13).) The court granted the motion and
8 entered default against Sound Distributions on September 9, 2024. (Def. (Dkt. # 15).)

9 Roadguard moved for entry of default judgment on September 24, 2024. (Def. J.
10 Mot.) On September 25, 2024, Sound Distributions again filed an answer, affirmative
11 defenses, and counterclaims, this time signed by both Mr. Mishkin and Ms. Sharma. (2d
12 Answer (Dkt. # 19).) After the Clerk filed a letter of deficiency stating that Ms. Sharma
13 still had not been admitted in this District, Sound Distributions filed a third version of the
14 answer, affirmative defenses, and counterclaims signed only by Mr. Mishkin. (3d
15 Answer (Dkt. # 21); *see* 2d Def. Letter (Dkt. # 20).)

16 On September 26, 2024, Sound Distributions moved to set aside the entry of
17 default. (Mot.) In his declaration supporting the motion, Mr. Mishkin explains that Ms.
18 Sharma's signature appeared on the original answer "due to a clerical mistake" and that
19 he did not receive the August 12 deficiency letter despite receiving other court notices via
20 email. (9/26/24 Mishkin Decl. (Dkt. # 23) ¶ 4.) When the court issued its order to show
21 cause, Mr. Mishkin was on family leave and again did not receive notice from the court
22 regarding the order. (*Id.* ¶ 5.) On September 16—unaware that the court had already

1 struck Sound Distributions’s answer and entered default—Mr. Mishkin instructed Ms.
2 Sharma to reach out to Roadguard’s attorney to initiate settlement discussions. (*Id.* ¶ 6.)
3 Ms. Sharma tried to contact Roadguard’s attorney several times in mid-September but
4 received no response. (*Id.*) Finally, on September 24, 2024, Mr. Mishkin received notice
5 from the court that Roadguard had moved for entry of default judgment. (*Id.* ¶ 7.) He
6 represents that he “immediately reviewed the docket to understand the situation[,]”
7 “swiftly corrected the deficiencies[,]” and filed an amended answer. (*Id.* ¶ 8.) Mr.
8 Mishkin now acknowledges that he “should have been more proactive in monitoring the
9 case docket.” (*Id.* ¶ 9.)

10 On October 3, 2024, the court renoted Sound Distributions’s improperly noted
11 motion to set aside default and stayed briefing on the motion for default judgment
12 pending the resolution of the instant motion. (10/3/24 Order (Dkt. # 24).) Roadguard
13 filed a timely response to the motion to set aside default, and Sound Distributions filed a
14 timely reply. (Resp.; Reply.) The motion to set aside default is now ripe for decision.

15 III. ANALYSIS

16 Federal Rule of Civil Procedure 55 sets forth a “two-step process” for entering
17 default judgment that consists of (1) entry of default, and (2) a motion for entry of default
18 judgment. *Symantec Corp. v. Global Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009); *see*
19 *also* Fed. R. Civ. P. 55; Local Rules W.D. Wash. LCR 55(b)(1). Default judgments,
20 however, “are ordinarily disfavored” and “[c]ases should be decided upon their merits
21 whenever reasonably possible.” *New-Gen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th
22 Cir. 2016) (quoting *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986)). “[J]udgment

1 by default is a drastic step appropriate only in extreme circumstances[.]” *United States v.*
2 *Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010)
3 (quoting *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)).

4 “The court may set aside an entry of default for good cause[.]” Fed. R. Civ. P.
5 55(c). The court must consider (1) whether the movant engaged in culpable conduct;
6 (2) whether the movant has a meritorious defense; and (3) whether setting aside the
7 default would prejudice the other party. *Mesle*, 615 F.3d at 1091. The party moving to
8 set aside the default bears the burden of demonstrating that all three factors favor
9 vacating the default. See *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th
10 Cir. 2001), *overruled on other grounds by Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).
11 The court has broad discretion to overturn an entry of default. *Mendoza v. Wight*
12 *Vineyard Mgmt.*, 783 F.2d 941, 945-46 (9th Cir. 1986). This discretion is “more liberally
13 applied” where, as here, a defendant seeks to set aside an entry of default pursuant to
14 Rule 55(c) rather than a default judgment pursuant to Rule 60(b). *Mesle*, 615 F.3d at
15 1091 n.1. Below, the court considers each of the three “good cause” factors and
16 concludes that there is good cause to vacate the entry of default.

17 **A. Culpable Conduct**

18 “[A] defendant’s conduct is culpable if [it] has received actual or constructive
19 notice of the filing of the action and *intentionally* failed to answer.” *TCI Grp.*, 244 F.3d
20 at 697 (quoting *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir.
21 1988)). The Ninth Circuit explains that “in this context the term ‘intentionally’ means
22 that a movant cannot be treated as culpable simply for having made a conscious choice

1 not to answer; rather, to treat a failure to answer as culpable, the movant must have acted
2 with bad faith, such as an ‘intention to take advantage of the opposing party, interfere
3 with judicial decisionmaking, or otherwise manipulate the legal process.’” *Mesle*, 615
4 F.3d at 1092 (quoting *TCI Grp.*, 244 F.3d at 697). A defendant’s conduct is culpable
5 “where there is no explanation of the default inconsistent with a devious, deliberate,
6 willful, or bad faith failure to respond.” *Id.* (citing *TCI Grp.*, 244 F.3d at 698). “[S]imple
7 carelessness is not sufficient to treat a negligent failure to reply as inexcusable, at least
8 without a demonstration that other equitable factors, such as prejudice, weigh heavily in
9 favor of denial of the motion to set aside a default.” *Id.* (citing *Pioneer Inv. Servs. Co. v.*
10 *Brunswick Assocs. Ltd.*, 507 U.S. 380, 388 (1993)).

11 The court concludes that Sound Distributions’s default was the result of Mr.
12 Mishkin’s carelessness and negligence, rather than bad faith. Although the court twice
13 directed Mr. Mishkin to correct the original answer, Mr. Mishkin represents that he did
14 not receive notice of the August 12 deficiency letter or the August 27 order to show
15 cause. (9/26/24 Mishkin Decl. ¶¶ 4-5.) After he received the motion for default
16 judgment, Mr. Mishkin promptly filed a corrected answer and moved to set aside default.
17 (*Id.* ¶¶ 7-8.) Mr. Mishkin acknowledges that he should have been more proactive in
18 monitoring the docket and that if he had done so, default would not have been entered
19 against his client. (*Id.* ¶¶ 9-10.) The court cannot find, based on these facts, that Sound
20 Distributions’s delay in correcting its answer reflected an intent to take advantage of
21 Roadguard, to interfere with the court’s decisionmaking in this case, or to otherwise
22 manipulate the proceedings in this case. *See Mesle*, 615 F.3d at 1092.

1 Roadguard argues that intent is irrelevant to the culpability analysis because
2 Sound Distributions is a legally sophisticated party. (Resp. at 7-8 (citing *Franchise*
3 *Holding II, LLC. v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 926 (9th Cir. 2004)).) In
4 the Ninth Circuit, however, “case law does not require disregarding a sophisticated
5 defendant’s intent.” *HTP, Inc. v. First Merit Grp. Holdings, Inc.*, No. 22-35184, 2022
6 WL 17958638, at *2 (9th Cir. Dec. 27, 2022) (affirming the district court’s decision to set
7 aside default). Furthermore, this case is distinguishable from Roadguard’s cited cases,
8 which involved motions to set aside default *judgments* and in which the defaulted
9 defendants filed nothing despite having notice of the litigation. *See Franchise Holding*,
10 375 F.3d at 926 (affirming denial of motion to vacate default judgment where defendant
11 “failed to file anything with the district court until after [plaintiff] began collecting on the
12 default judgment”); *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840
13 F.2d 685, 690 (9th Cir. 1988) (affirming denial of motion to vacate default judgment
14 where defendant’s president had actual notice of the summons and complaint but
15 defendant nevertheless failed to answer). Here, in contrast to *Franchise Holding* and
16 *Direct Mail Specialists*, entry of default resulted from Sound Distributions’s filing of a
17 procedurally deficient answer that it failed to timely correct, rather than its refusal to
18 respond to the litigation altogether. And the court’s discretion to set aside default is
19 broader here than in those cases because the court has not entered default judgment
20 against Sound Distributions. Accordingly, the court concludes that Sound Distributions
21 has shown that it did not engage in culpable conduct that would prohibit setting aside the
22

1 default. Sound Distributions, however, is placed on notice that the court will not so
2 readily forgive missed deadlines in the future.

3 **B. Meritorious Defense**

4 A defendant seeking to vacate an entry of default “must present specific facts that
5 would constitute a defense.” *Mesle*, 615 F.3d at 1094 (quoting *TCI Grp.*, 244 F.3d at
6 700). This burden “is not extraordinarily heavy.” *TCI Grp.*, 244 F.3d at 700. “All that is
7 necessary to satisfy the ‘meritorious defense’ requirement is to allege sufficient facts that,
8 if true, would constitute a defense”; the court is not to determine whether the factual
9 allegations are true when it decides the motion to set aside the default. *Id.*

10 Sound Distributions directs the court to the defenses it raised in its answer,
11 including its counterclaims for breach of contract, breach of the duty of good faith and
12 fair dealing, and unjust enrichment arising from the parties’ service provider contract.
13 (Mot. at 4; *see also* 3d Answer at 5-10 (“Counterclaims”).) The court concludes that
14 Sound Distributions has alleged facts that would, if true, constitute a defense to
15 Roadguard’s breach of contract claim.⁵ (*See, e.g.*, 3d Answer ¶¶ 11, 15 (asserting that
16 Roadguard’s invoices were inaccurate); Counterclaims ¶ 8 (same).) Therefore, the court
17 concludes that the “meritorious defense” factor favors vacating the default.

21 ⁵ The court’s determination that Sound Distributions has alleged facts that would
22 constitute a defense does not foreclose Roadguard from moving to dismiss Sound Distributions’s
counterclaims.

1 **C. Prejudice**

2 To be prejudicial, setting aside an entry of default must result in greater harm than
3 simply delaying the resolution of the case. *TCI Grp.*, 244 F.3d at 701. Rather, “the delay
4 must result in tangible harm such as loss of evidence, increased difficulties of discovery,
5 or greater opportunity for fraud or collusion.” *Id.* (quoting *Thompson v. Am. Home*
6 *Assur. Co.*, 95 F.3d 429, 433-34 (6th Cir. 1996)). Merely “being forced to litigate on the
7 merits” is not considered prejudice. *Id.*

8 The court agrees with Sound Distributions that there is no cause to believe that the
9 brief delay caused by its failure to timely file a procedurally proper answer will result in
10 “tangible harm.” (*See* Mot. at 10.) Roadguard does not address the prejudice factor of
11 the good cause analysis. (*See generally* Resp.) Accordingly, the court concludes that the
12 prejudice factor favors vacating the entry of default.

13 In sum, because all three “good cause” factors favor vacating the entry of default,
14 the court GRANTS Sound Distributions’s motion to set aside default, VACATES the
15 entry of default, and DENIES Roadguard’s motion for default judgment as moot.

16 **D. Attorneys’ Fees and Costs**

17 Roadguard seeks an award of \$11,813.50 in attorneys’ fees and costs it incurred in
18 preparing its motion for entry of default, its motion for default judgment, and its response
19 to the motion to set aside default. (Resp. at 10-11; *see* Feinberg Decl. ¶ 13.) Sound
20 Distributions counters that an award of fees and costs is unwarranted because Roadguard
21 could have avoided incurring expenses had it informed Sound Distributions that it
22

1 intended to move for default in September 2024. (Reply at 5.) The court grants in part
2 Roadguard's request for an award of attorneys' fees and costs.

3 A court may set aside default "'upon such terms as are just,' and 'it is appropriate
4 to condition setting aside a default upon the payment of a sanction.'" *First Mercury Ins.*
5 *Co. v. SQI, Inc.*, No. C13-2109JLR, 2014 WL 496685, at *2 (W.D. Wash. Feb. 6, 2014)
6 (quoting *Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec*,
7 854 F.2d 1538, 1546-47 (9th Cir. 1988)). "The most common sanction imposed 'is that
8 the defendant reimburse the plaintiff for costs incurred because of the default.'" *Id.*
9 (quoting *Nilsson*, 854 F.3d at 1546).

10 In *Nilsson*, the court imposed sanctions to address prejudice against the plaintiff
11 that resulted from three previous entries of default and four orders imposing monetary
12 sanctions against the defendant for failure to comply with court orders. *Nilsson*, 854 F.2d
13 at 1547. The court determined that an award of fees and costs was appropriate because
14 the defendant had deliberately and willfully complicated the proceedings in that case. *Id.*
15 In contrast, in *Na Pali Haweo Cmty. Ass'n v. Grande*, the district court determined that
16 the circumstances did not "rise to the level of egregiousness required by *Nilsson*" where it
17 was "arguably" the plaintiff, rather than the defendants, "whose actions can be seen as
18 complicating the proceedings surrounding the initial granting of the default, which caused
19 both parties to incur unnecessary costs." 252 F.R.D. 672, 675 (D. Haw. 2008).

20 The court concludes that this matter lies somewhere between *Nilsson* and *Na Pali*
21 *Haweo*. Sound Distributions is correct that Roadguard could have avoided incurring
22 expenses if it had notified Sound Distributions's attorneys—with whom it had been in

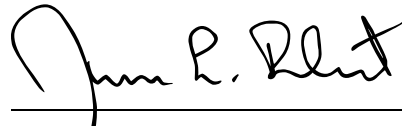
1 contact—that it intended to move for default and default judgment. For example,
2 Roadguard could have informed Ms. Sharma, in response to her mid-September calls and
3 emails regarding settlement, that it intended to move for default judgment the following
4 week. Instead, it did not respond at all. (9/26/24 Mishkin Decl. ¶ 6.) And Roadguard
5 could have stipulated to Sound Distributions’s motion to set aside the default in light of
6 the Ninth Circuit’s policy in favor of deciding cases on their merits and the lack of
7 prejudice Roadguard would face if the default were vacated. *See, e.g., Na Pali Haweo*,
8 252 F.R.D. at 275 (denying plaintiff’s request for attorneys fees where plaintiff
9 challenged the motion to set aside “in spite of having amost no possibility of defeating
10 the motion”). At the same time, Mr. Mishkin acknowledges that he is responsible for
11 monitoring the docket of the cases in which he has appeared. (9/26/24 Mishkin
12 Decl. ¶¶9-10.) Nevertheless, he failed to do so, and thus missed six filings—including
13 two orders—that were made between the date he filed the procedurally deficient answer
14 and the date the Clerk entered default. (*See generally* Dkt.)

15 The court concludes that both parties’ conduct has contributed to Roadguard’s
16 accrual of attorneys’ fees and costs in connection with Sound Distributions’s default.
17 Thus, the court GRANTS IN PART Roadguard’s request for reimbursement of attorneys’
18 fees and costs. Sound Distributions shall pay to Roadguard only the reasonable attorneys
19 fees and costs Roadguard incurred in connection with drafting and filing its motion for
20 default judgment and supporting declaration. This award does not include fees and costs
21 incurred in connection with Roadguard’s motion for entry of default or its response to
22 Sound Distributions’s motion to set aside default.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS Sound Distributions's motion to set aside default (Dkt. # 22); VACATES the entry of default (Dkt. # 15); GRANTS IN PART Roadguard's request for attorneys' fees and costs (Dkt. # 25 at 10-11); and DENIES Roadguard's motion for default judgment (Dkt. # 16) as moot. Roadguard is ORDERED to file, by no later than **November 1, 2024**, any necessary declarations and supporting documents establishing the reasonable attorneys' fees and costs associated with filing its motion for default judgment and supporting declaration. Sound Distributions may file a response to Roadguard's submission by no later than **November 8, 2024**.

Dated this 22nd day of October, 2024.



JAMES L. ROBART
United States District Judge